

ROADMAP	
TITLE OF THE INITIATIVE	Legislative proposal on special safeguards in criminal procedures for Suspected or accused Persons who are vulnerable
TYPE OF INITIATIVE	<input checked="" type="checkbox"/> CWP <input type="checkbox"/> Non-CWP <input type="checkbox"/> Implementing act/Delegated act
LEAD DG – RESPONSIBLE UNIT	DG Justice B1
EXPECTED DATE OF ADOPTION	Month/Year: May 2012
VERSION OF ROADMAP	No: 1 Last modification: Month/Year: September 2011

This indicative roadmap is provided for information purposes only and is subject to change. It does not prejudice the final decision of the Commission on whether this initiative will be pursued or on its final content and structure.

A. Context, problem definition	
(i) What is the political context of the initiative? (ii) How does it relate to past and possible future initiatives, and to other EU policies? (iii) What ex-post analysis of the existing policy has been carried out and what results are relevant for this initiative?	
<p>The proposal is part of the Procedural Rights Roadmap, adopted by the Council on 30/11/2009 , which invites the COM to put forward proposals on various procedural rights. This relates to Measure E of the Roadmap (safeguards for children and vulnerable adults).</p>	
<p>What are the main problems which this initiative will address?</p>	
<p>At present, there appears to be a disparity in protection across Member States with regards to protection for children and other vulnerable suspects and accused persons in criminal proceedings. This lack of common standards is an obstacle to mutual trust between judicial authorities in Member States and to mutual recognition of judicial decisions in criminal matters.</p> <p>The protection afforded to vulnerable persons includes the means of identifying a vulnerable person; access to a lawyer; and special measures to allow the effective participation of the person during criminal proceedings. It results from the ECtHR case of SC v UK (2004) that a condition for a fair trial is the "effective participation" in the trial, meaning that the person has a broad understanding of the nature of the proceedings and is assisted if necessary. In particular with regard to children, the Court takes into account their age, level of maturity and intellectual and emotional capacities. Similar reasoning applies to vulnerable adults.</p> <p>It results from preliminary research that Member States do have minimum standards for children, in line with the UN Convention on the Rights of the Child (signed by all Member States), however these minima are not always enshrined in legislation and practice. Furthermore, there appears to be very little legislation in Member States protecting vulnerable adults, who represent a considerable proportion of defendants in the criminal justice system.</p>	
<p>Who will be affected by it?</p>	
(1) Suspects and accused children and adults in criminal proceedings and their families; (2) Professionals providing assistance to the person: lawyers, an appropriate adult, medical/health/social professionals, carers, guardians, teachers; (3) Police authorities including custody officers; prison officers; (4) Courts, judges and justice professionals facing judicial cooperation requests from other Member States as mutual trust may be insufficient; (5) Ultimately the Member States themselves are affected as mutual recognition mechanisms are hampered by lack of mutual trust.	
(i) Is EU action justified on grounds of subsidiarity? (ii) Why can Member States not achieve the objectives of the proposed action sufficiently by themselves? (Necessity Test) (iii) Can the EU achieve the objectives better? (Test of EU Value Added)	
<p>To create an genuine area of freedom, justice and security policy, the Commission has been asked by Member States to propose further EU action on this specific issue under the Procedural Rights Roadmap, as it is felt to be needed. An Impact Assessment will be carried out in order to assess what action is optimal.</p>	

B. Objectives of the initiative

What are the main policy objectives?

Promotion of mutual trust between Member States' judicial authorities in order to enhance mutual recognition of judicial decisions throughout the EU by way of laying down minimum standards for the protection of children and other vulnerable suspected or accused persons in criminal proceedings.

Do the objectives imply developing EU policy in new areas?

No.

C. Options

- (i) What are the policy options being considered?
- (ii) What legislative or 'soft law' instruments could be considered?
- (iii) How do the options respect the proportionality principle?

(i) The possible policy options are:

- 1) Status quo: no action initiated at the EU level;
- 2) Non-legislative action: training and action to make more Member States sensitive to the necessity to strengthen procedural safeguards for vulnerable persons;
- 3) Legislative action: one or several instruments setting out minimum standards addressing the specific needs of minors and other vulnerable persons; this option can range from a less ambitious to a more ambitious approach; or
- 4) A mix of options.

ii) The EU can make a proposal for a draft Directive (legislative approach) to regulate the protection afforded to children and other vulnerable suspected or accused persons in criminal proceedings, or make recommendations about best practice, or carry out awareness raising activities (non-legislative approach).

iii) This will be completed once an Impact Assessment has been carried out. Any preferred option should not go beyond what is necessary to achieve the objective.

D. Initial assessment of impacts

What are the benefits and costs of each of the policy options?

Member States themselves called upon the Commission to put forward a legislative proposal in this area.

At present, the status quo option would result in little improvement because a) Member States appear confident in providing adequate protection for children (although the level of protection de facto varies greatly between them) in criminal proceedings and b) the lack of adequate protection for other vulnerable persons would remain. Therefore, the usefulness of such action - which does little more than encourage Member States to introduce legislation themselves - would be negligible. Non-legislative action would also result in little encouragement for Member States to adhere to common minimum standards.

Possible benefits and costs of the policy options will be assessed by the impact assessment which will be carried out.

Could any or all of the options have significant impacts on (i) simplification, (ii) administrative burden and (iii) on relations with other countries, (iv) implementation arrangements? And (v) could any be difficult to transpose for certain Member States?

Pending the outcome of the external IA study.

(i) Will an IA be carried out for this initiative and/or possible follow-up initiatives? (ii) When will the IA work start? (iii) When will you set up the IA Steering Group and how often will it meet? (iv) What DGs will be invited?

(i) Yes

(ii) October 2011

(iii) It will be set up in Autumn 2011. A meeting in November 2011 has been scheduled.

(iv) SG, Legal Service, HOME, SANCO, EAC, EMPL, ESTAT

(i) Is any of options likely to have impacts on the EU budget above €5m?

(ii) If so, will this IA serve also as an ex-ante evaluation, as required by the Financial regulation? If not, provide information about the timing of the ex-ante evaluation.

(i) No

E. Evidence base, planning of further work and consultation

- (i) What information and data are already available? Will existing impact assessment and evaluation work be used?
- (ii) What further information needs to be gathered, how will this be done (*e.g. internally or by an external contractor*), and by when?
- (iii) What is the timing for the procurement process & the contract for any external contracts that you are planning (*e.g. for analytical studies, information gathering, etc.*)?
- (iv) Is any particular communication or information activity foreseen? If so, what, and by when?

- (i) Reports from the Council of Europe, the UN; replies to the Green Paper of the Commission of 15 May 2003 on Procedural Safeguards for Suspects and Defendants in Criminal Proceedings throughout the European Union; relevant European Court of Human Rights case law; reports from NGOs as the Prison Reform Trust, Children's Commissioners, European Network of ombudspersons for Children, Justice.
- (ii) A study has been commissioned to provide an overview and analysis via collecting data and analysis of such data for a measure on strengthening the fairness of the proceedings as regards children and other suspected or accused persons who cannot understand and follow the content or the meaning of the proceedings, owing, for example, to their age, mental or physical condition. The study is due to provide support data for the problem definition and the content of safeguards. It should also provide support data for the analysis of the possible impacts of the policy options, particularly regarding financial impacts, and the impacts on the rights and freedoms enshrined in the EU Charter of Fundamental Rights. This study is conducted by an external contractor.
- (iii) Signature of the contract expected early in October 2011.
- (iv) To be decided later.

Which stakeholders & experts have been or will be consulted, how, and at what stage?

We held a meeting with EU Member States experts on the 23/09/2011. Justice Forum, Bar Associations, ENCJ, Member States, ECLAN and all interested parties will also be consulted during the data finding stage of the external IA study. This will allow to bring together stakeholders from different backgrounds (defence lawyers, NGOs, ministries, judges, prosecutors etc); no separate public consultation is scheduled.